

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

TREVOR BENJAMIN, # 30827-037

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Petitioner

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v

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Civil Action No. DKC-12-3603

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UNITED STATES OF AMERICA

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Respondent

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MEMORANDUM OPINION

Before the court is Trevor Benjamin's correspondence requesting assistance regarding the length of his placement in a Community Corrections Center under the Second Chance Act of 2007.¹ Benjamin, who is presently incarcerated at LSCI-Allenwood, Pennsylvania, is asking for the maximum twelve-month placement in a half-way house, instead of the five-month assignment he has been granted by the Bureau of Prisons. For reasons to follow, the court will construe his request as a petition for writ of habeas corpus under 28 U.S.C. § 2241, and it will be dismissed without prejudice for lack of jurisdiction.

By a judgment entered November 7, 1996, Benjamin was convicted after pleading guilty to six counts of bank robbery and one count of use of a firearm during and in relation to a crime of violence. He was sentenced by this court to an aggregate term of imprisonment of 248 months to be followed by three years of supervised release. *See United States v. Benjamin*, Criminal Action No. DKC-96-217 (D. Md. 1996).

Habeas corpus relief is available under 28 U.S.C. § 2241 when a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3);

¹ The Second Chance Act provides that a prisoner may be granted pre-release custody to serve a portion of his sentence in the community, such as on home confinement or in a residential entry center (RRC) or halfway house. *See* 18 U.S.C. § 3624(c).

Rose v. Hodges, 423 U.S. 19, 21 (1975). When a defendant seeks judicial review of the execution of his sentence, rather than the legality of the sentence itself, the appropriate remedy is a § 2241 habeas petition filed against the warden of the prison facility in the district where the petitioner is confined. See *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 447, 434 n. 7 (2004); *Levine v. Apker*, 455 F.3d 71, 77–78 (2d Cir. 2006) (habeas petition filed under 28 U.S.C. § 2241 is the proper vehicle to challenge Bureau of Prisons policy regarding petitioner's placement at federal prison instead of a community correctional facility).

Benjamin is presently in the custody of the Warden, LSCI Allenwood. That facility is located in the Middle District of Pennsylvania.² Accordingly, this case will be dismissed without prejudice for lack of jurisdiction so that Benjamin may file for relief in the appropriate judicial district. A separate order follows.

Date: January 17, 2013

/s/
DEBORAH K. CHASANOW
United States District Judge

² The address for the United States District Court for the Middle District of Pennsylvania is: U.S. Courthouse, 228 Walnut Street, P.O. Box 983, Harrisburg, PA. 17108. Petitioner is reminded that prisoners are generally required to exhaust available administrative remedies before filing a habeas corpus petition pursuant to 28 U.S.C. § 2241. This court expresses no opinion as to the merits of his claims.